

### § 48.3

### 28 CFR Ch. I (7–1–09 Edition)

(d) The term *existing arrangement* means any joint newspaper operating arrangement entered into before July 24, 1970.

(e) The term *joint newspaper operating arrangement* means any contract, agreement, joint venture (whether or not incorporated), or other arrangement entered into between two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any of the following: Printing; time, method, and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution: *Provided*, That there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined.

(f) The term *newspaper* means a publication produced on newsprint paper which is published in one or more issues weekly (including as one publication any daily newspaper and any Sunday newspaper published by the same owner in the same city, community, or metropolitan area), and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.

(g) The term *party* means any individual, and any partnership, corporation, association, or other legal entity.

(h) The term *person* means any individual, and any partnership, corporation, association, or other legal entity.

#### § 48.3 Procedure for filing all documents.

All filings required by these regulations shall be accomplished by:

(a) Mailing or delivering five copies of each document (two copies in the case of documents filed by the Assistant Attorney General in charge of the Antitrust Division) to the Assistant Attorney General for Administration, Department of Justice, Washington, DC 20530. He shall place one copy in a numbered public docket; one copy in a duplicate of this file for the use of offi-

cials with decisional responsibility; and (except in the case of documents filed by the Assistant Attorney General in charge of the Antitrust Division) shall forward three copies to the Assistant Attorney General in charge of the Antitrust Division; except that documents subject to nondisclosure orders under § 48.5 shall be held under seal and disclosed only in accordance with the provisions of that section; and

(b) Mailing or delivering one copy of each document filed after a hearing has been ordered to each party to the proceedings, along with the name and address of the party filing the document or its counsel, and filing in the manner provided in paragraph (a) of this section a certificate that service has been made in accordance herewith.

#### § 48.4 Application for approval of joint newspaper operating arrangement entered into after July 24, 1970.

(a) Persons desiring to obtain the approval of the Attorney General of a joint newspaper operating arrangement after July 24, 1970, shall file an application in writing setting forth a short, plain statement of the reasons why the applicants believe that approval should be granted.

(b) With the request, the applicants shall also file copies of the following:

(1) The proposed joint newspaper operating agreement;

(2) Any prior, existing or proposed agreement between any of the newspapers involved, or a statement of any such agreements as have not been reduced to writing;

(3) With respect to each newspaper, for the 5-year period prior to the date of the application,

(i) Annual statements of profit and loss;

(ii) Annual statements of assets and liabilities;

(iii) Reports of the Audit Bureau of Circulation, or statements containing equivalent information;

(iv) Annual advertising lineage records;

(v) Rate cards;

(4) If any amount stated in paragraph (b)(3)(i) or (ii) of this section represents

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an allocation of revenues, expenses, assets or liabilities between the newspaper and any parent, subsidiary, division or affiliate, the financial statements shall be accompanied by a full explanation of the method by which each such amount has been allocated.

(5) If any of the newspapers involved purchased or sold goods or services from or to any parent, subsidiary, division or affiliate at any time during the five years preceding the date of application, a statement shall be submitted identifying such products or services, the entity from which they were purchased or to which they were sold, and the amount paid for each product or service during each of the five years.

(6) Any other information which the applicants believe relevant to their request for approval.

(c) A copy of the application and supporting data shall be open to public inspection during normal business hours at the main office of each of the newspapers involved in the arrangement, except to the extent permitted by nondisclosure orders under § 48.5; except that materials for which nondisclosure has been requested under § 48.5 need not be made available for inspection before the request has been decided.

### **§ 48.5 Requests that information not be made public.**

(a) Any applicant may file a request that commercial or financial data required to be filed and made public under these regulations, which is privileged and confidential within the meaning of 5 U.S.C. 552(b), be withheld from public disclosure. Each such request shall be accompanied by a statement of the reasons why nondisclosure is required. The request shall be determined by the Attorney General who shall consider the extent to which (1) disclosure may cause substantial harm to the applicant submitting the information, and (2) nondisclosure may impair the ability of persons who may be adversely affected by the proposed arrangement to present their views in proceedings under these regulations. Information relevant to the financial conditions of the newspaper or newspapers represented to be failing ordinarily shall not be ordered withheld from public disclosure.

(b) Upon ordering that any documents be withheld from public disclosure, the Attorney General shall file a statement setting forth the subject matter of the documents withheld. Any person desiring to inspect the documents may file a request for inspection, identifying with as much particularity as possible the materials to be inspected and setting forth the reasons for inspection and the facts in support thereof. The request for disclosure shall be considered by the Attorney General, who shall give the applicant that submitted the documents an opportunity to be heard in opposition to disclosure. Orders granting inspection shall specify the terms and conditions thereof, including restrictions on disclosure to third parties.

(c) Documents ordered withheld from public disclosure shall be made available to the Assistant Attorney General in charge of the Antitrust Division. If a hearing is held, the documents may be offered as evidence by any party to whom they have been disclosed. The administrative law judge may restrict further disclosure as he deems appropriate, taking into account the considerations set forth in paragraph (a) of this section.

(d) Requests for access to materials within the scope of this section that may be filed after the conclusion of proceedings under these regulations shall be processed in accordance with the Department's regulations under 5 U.S.C. 552 (part 16 of this chapter).

### **§ 48.6 Public notice.**

(a) Upon the filing of the documents required by § 48.4, the applicants shall file, and publish on the front pages of each of the newspapers for which application is made, daily and Sunday (if a Sunday edition is published) for a period of one week:

(1) Notice that a request for approval of a joint newspaper operating arrangement has been filed with the Attorney General;

(2) Notice that copies of the proposed arrangement, as well as all other documents submitted pursuant to § 48.4, are available for public inspection at the Department of Justice and at the main offices of the newspapers involved; and